IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-119

JAMES DAY HODGSON, Secretary of Labor,
Plaintiff-Respondent

and

MIKE TRBOVICH (Proposed Intervenor), *Petitioner*

v.

UNITED MINE WORKERS OF AMERICA,
Defendant-Respondent

On Petition For Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT, UNITED MINE WORKERS OF AMERICA IN OPPOSITION

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STATUTORY PROVISIONS

As petitioner has failed to set out verbatim the statutory provisions involved, respondent has annexed hereto, as an Appendix, §§ 401, 402, and 403 of the Landrum-Griffin Act, 29 U.S.C. §§ 481, 482, and 483.

QUESTION PRESENTED FOR REVIEW

May a non-candidate union member who subsequently becomes chairman of a union political party intervene on behalf of himself and other members as a party-plaintiff in a post-election action brought by the Secretary of Labor to set aside a union election pursuant to Title IV, section 402 of the Landrum-Griffin Act [29 U.S.C. § 482(b)], for the purpose of amending the complaint to include two additional grounds for setting aside the election, both previously rejected by the Secretary.

STATEMENT OF THE CASE

On December 9, 1969, over 1200 local unions chartered by the United Mine Workers of America, conducted their election of International Officers.[1] It was conducted by duly elected officers in each local union through the medium of a secret ballot. The official report of the International Tellers showed that the incumbent, W. A. Boyle, had defeated Joseph Yablonski by almost a two-to-one majority.[2]

It is regrettable that petitioner's statement is replete with factual assertions, 99 percent of which have never been proven in a court of law.[3]

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[1] Although an International President, Vice President and Secretary-Treasurer, as well as Auditors and Tellers were elected, petitioner apparently contests only the election of the International President.

[2] The official tally showed that W. A. "Tony" Boyle received 80,577 votes, and Joseph "Jock" Yablonski received 46,073.

[3] The Secretary of Labor's action to set aside the International election of the United Mine Workers of America is set for trial on September 13, 1971 (Civil Action No. 662-70, D.D.C.).

On April 1, 1970, petitioner was allegedly elected chairman of a dissident faction within the United Mine Workers of America. On October 2, 1970, approximately seven months after the Secretary of Labor's complaint had been filed, petitioner moved to intervene on behalf of himself and as chairman of Miners for Democracy. This complaint sought to raise two additional issues. The first was that a pension increase by the trustees of the United Mine Workers of America Welfare and Retirement Fund, on June 23, 1969, constituted improper interference in the election campaign. The second issue alleged that approximately 500 local unions were illegally constituted and should be disbanded before a court-ordered election is held. With respect to Count II of the complaint, petitioner sought to raise a different cause of action under section 201 of the Act (29 U.S.C. § 431). He also prayed for the appointment of monitors.

The Honorable George P. Shultz, in testifying before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare, on May 4, 1970, delineated his views with respect to these matters. Petitioner is highly critical of the Secretary's failure to utilize his investigative powers immediately prior to the conduct of the election. They assert that their pre-election complaints to him form the backbone of his suit to set aside the election. Yet, Mr. Shultz has noted that, "I think it is fair to say that the basic thrust of the appeals that were made to the Department of Labor by and on behalf of Mr. Yablonski were that we give him assistance in his campaign."[4] Pre-election allega-

[4] Statement of the Honorable George P. Shultz before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare, on May 4, 1970, p. 8.

tions by Mr. Yablonski of violence to himself and his supporters were investigated by either the Department of Labor or the Department of Justice and failed to disclose a proper basis.

In rejecting petitioner's thesis that the Secretary should have assisted Mr. Yablonski in his campaign, Mr. Shultz replied,

> . . . Requests to identify wrongdoers during a campaign are received by the Department of Labor in many keenly contested elections. The cry of "Throw the rascals out" is heard in union as well as other elections and I do not believe that the Department of Labor should use its authority to publicize as a means of identifying who the rascals are. Rascals should be identified either by due-process proceedings in the courts or by the rough and tumble of politics—not by press releases issued by the Department of Labor and subject to no review in the courts.[5]

Before examining the two additional issues which petitioner seeks to interject in this case, it should be noted that the wisdom of Secretary Shultz was exemplified when he testified that,

> . . . if everything a union officer does is, as it may benefit or not benefit the members, constitutes a violation of this Act, and then you would be immobilizing him for the period of the election campaign at least, so he could not go and negotiate a new contract somewhere or do anything, that is not the intent of the Congress, that is for certain.[6]

On June 23, 1969, the union and employer trustees of the United Mine Workers of America Welfare and

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[5] *Id.* at 5.

[6] *Id.*, transcript of hearings, p. 696.

Retirement Fund increased the pensions of beneficiaries from $115 to $150 per month. The Secretary of Labor has investigated the matter and found that the pension increase was not improper interference by the union in the election.[7] Rejecting the Exchange Parts Doctrine developed under the National Labor Relations Act in *NLRB* v. *Exchange Parts Co.*, 375 U.S. 405 (1964), as not being applicable to the instant case, the Secretary pointed out the falseness of the analogy and its dangers.[8]

It is significant that, although the pension increase was the subject of litigation in *Blankenship, et al.* v. *W. A. Boyle, et al.*, Civil No. 2186-69, D.D.C., no one, including any court, has suggested or even intimated that there should be a rollback of the pension increase. Even Senator Harrison Williams' auditors failed to appreciate that this industry-wide irrevocable trust was supposed to operate on a pay-as-you-go basis. This trust was created for the benefit of coal miners and was never intended to accumulate money for its own sake. Financed by royalties on coal produced for use or for sale as a result of a collective bargaining agreement, there is not a shred of evidence to support the contention that the trust will become bankrupt by 1975.

The second issue involved petitioner's coined phrase, "bogus locals." The Secretary of Labor, upon investigation, has found that the interpretation of the United Mine Workers of America of its constitution is reasonable.[9] He has further found that the issue of "bogus locals" could not possibly have affected the

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[7] *Id.*, statement of Secretary of Labor George P. Shultz, p. 13.

[8] *Id.*, at 14-15.

[9] *Id.* at 17.

outcome of the election, as pensioned union members would still have had the right to vote. This issue is not new. It has previously been raised by petitioner's counsel in *Yablonski, et al.* v. *United Mine Workers of America,* Civil No. 3436-69, D.D.C.; *sub nom Karl Kafton, et al.* (including Mike Trbovich) v. *United Mine Workers of America.*

It is true that in the pre-election period Mr. Yablonski filed a number of lawsuits concerning the election. In his initial suit he sought the right to distribute campaign literature prior to becoming a candidate within the meaning of the Union Constitution. The Union unsuccessfully opposed his complaint, on the basis that the only federal court decision on the point required the individual to be a candidate within the meaning of that term as used in the Union Constitution. The United States District Court for the District of Columbia held otherwise.

A second suit challenged the U.M.W. Journal and its editor. Subsequently, the Court determined that during the period of the general election, that is, from August 15 through December 9, 1969, the Journal had not been improperly used as a campaign instrument.

In a third suit Mr. Yablonski sought to have the election conducted by the Honest Ballot Association, rather than the duly-elected officers of the local unions throughout the country. His contention was rejected by the Court.

On the eve of election, Mr. Yablonski filed an action pursuant to 29 U.S.C. § 501, charging the incumbent officers with having "surrendered $9,000,000 of U.M.W.A. assets unjustified by any claim of union benefit." Utilized as campaign propaganda, there was

insufficient time to respond to Mr. Yablonski's charges. The suit has not yet come to trial.

The basic issue is whether or not the Secretary of Labor has discretion in the prosecution of litigation to set aside a union election. Once having filed a suit, which by statute is exclusively within his province, should he be permitted in the public interest to conduct the litigation in his own way; or, on the other hand, should any person affected thereby have the right to participate in the trial of the cause? The District Court ruled that the remedy and the conduct of the remedy were exclusively within the province of the Secretary of Labor. The United States Court of Appeals for the District of Columbia Circuit affirmed.[10]

ARGUMENT

As a preliminary matter, it is to be noted that petitioner has fallen into the familiar error of failing to specify with particularity what considerations warrant the exercise of this Court's discretionary power to review the decision of the Court of Appeals. There is no claim of substantial conflict with any decision of either this Court or other circuit courts of appeal. Petitioner notes that in *Stein* v. *Wirtz,* 366 F. 2d 188 (10th Cir., 1966) certiorari was denied, 386 U.S. 996, where a union member's motion to intervene for the purpose of continuing the prosecution of a Title IV post-election case was denied. There, the prosecution had entered into a stipulation of settlement and the union member disagreed.

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[10] Petitioner suggests that, because time was of the essence, the Court of Appeals contented itself with a brief *per curiam* decision. There is no basis for this suggestion.

I.

Enforcement of Post-Election Remedy to Challenge a Union Election Is Statutorily the Exclusive Function of the Secretary of Labor.

The legislative history of the Act clearly demonstrates that the manner of enforcing a post-election remedy was the subject of much discussion. At conference, the final Senate version was accepted, placing enforcement in the hands of the Secretary of Labor. Nothing could be clearer than the wording of that portion of § 403 of Title IV of the Act, 29 U.S.C. § 483, which provides:

> The remedy provided by this subchapter for challenging an election already conducted shall be exclusive.

The instant case presents a classic situation where petitioner disagrees with the conduct of the prosecution of a post-election complaint by the Secretary of Labor. The Secretary's testimony before the Senate Subcommittee on Labor manifests his investigation and discretionary determination as to what issues would be relied upon in the prosecution of litigation to set aside the union election. He rejected the two issues which petitioner seeks to incorporate in the trial of that cause.

In order to best serve the public interest Congress decided to utilize the special knowledge and discretion of the Secretary of Labor as the exclusive method for protecting Title IV rights. *Calhoon* v. *Harvey,* 379 U.S. 134 at 140 (1964). This Court has noted that, "Congress emphatically gave unions the primary responsibility for enforcing compliance with the Act, Congress also settled enforcement authority on the Secretary of Labor to insure that serious violations would

not go unremedied and the public interest go unvindicated." *Wirtz* v. *Hotel, Motel, and Club Employees' Union, Local 6,* 391 U.S. 492 at 498, 499 (1968).

To permit a political faction to intervene as a party-plaintiff would turn the trial of the cause into a political forum, rather than the dispassionate consideration of the merits of the controversy.

II.

Interpretation of Title IV Post-Election Remedies by Federal Courts.

Litigation in Title IV post-election remedies has fallen into two categories: motions to intervene in suits brought by the Secretary of Labor; and individual suits instituted by union members, the latter involving individual actions attacking the validity of elections and actions against the Secretary of Labor in the nature of mandamus.

In addition to *Stein* v. *Wirtz, supra,* the Second Circuit in *Wirtz* v. *National Maritime Union of America,* 409 F. 2d 1340 (1969), affirmed the denial of a motion filed by certain union members to overrule the Secretary of Labor with respect to certain rules he had formulated to govern a new election. The Secretary had successfully set aside the union's prior election. Relying on *Calhoon* v. *Harvey, supra,* and noting the exclusive rights granted to the Secretary of Labor for post-election remedies, the Court held that, although appellant's motion dealt with a second election, it did not justify a different result.

All district courts have denied motions to intervene in actions brought by the Secretary of Labor to invalidate elections. *Shultz* v. *Steelworkers,* 313 F. Supp.

549, 74 L.R.R.M. 2222 (W.D. Pa., 1970); *Wirtz* v. *Local Union No. 1377, International Brotherhood of Electrical Workers,* 288 F. Supp. 914 (N.D. Ohio, 1968); *Wirtz* v. *Operating Engineers,* 66 L.R.R.M. 2080 (C.D. Calif., 1967); *Wirtz* v. *Local 825,* 60 L.R.R.M. 2092 (D. N.J., 1965); *Wirtz* v. *Local 560, Teamsters,* 61 L.R.R.M. 2470 (D. N.J., 1965). In the above cited *Steelworkers* case, applicant for intervention was the complainant to the Secretary of Labor.

In the second category of cases, the courts have denied suits by individuals questioning the validity of already-conducted union elections, as well as suits to compel the Secretary to bring a Title IV post-election action. *Wirtz* v. *Local Union 410, et al., International Union of Operating Engineers,* 366 F. 2d 438 (2nd Cir., 1966); *Mamula* v. *United Steelworkers of America,* 304 F. 2d 108 (3rd Cir., 1962); *McGuire* v. *Locomotive Engineers,* 426 F. 2d 504 (6th Cir., 1970); *Katrinic* v. *Wirtz,* 62 L.R.R.M. 2557 (D.D.C., 1966); *Ravaschieri* v. *Schultz,* 75 L.R.R.M. 2272 (S.D. N.Y., 1970); *Morrissey* v. *Shultz,* 311 F. Supp. 744, 74 L.R.R.M. 2679 (S.D. N.Y., 1970); *DeVito* v. *Shultz,* 300 F. Supp. 381 (D. D.C., 1969).

III.

Petitioner's Reliance on Cases Involving Other Statutes Is Misplaced.

Neither *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.,* 386 U.S. 129 (1967), nor *International Union of United Automobile Workers, AFL-CIO Local 283* v. *Scofield,* 382 U.S. 205 (1965), stated by petitioner are in point. In both cases, the intervenor had a judicially cognizable interest. *Scofield* held that the successful party in an unfair labor practice proceeding before the NLRB had a right to intervene when the Court of Appeals reviewed the

Board's order. As stated by the District Court in the instant case, the main rationale of the decision was the desirability of avoiding multiple appeals. Unlike *Scofield,* petitioner herein has never had standing in this judicial proceeding.

Both the National Labor Relations Act and the Landrum-Griffin Act set forth a systematic scheme for the prosecution of remedies. Thus, a charging party is without standing to apply to the Circuit Court of Appeals to have an employer judged guilty of contempt in disobeying the Court's decree enforcing the Board's order. *Amalgamated Utility Workers* v. *Consolidated Edison Co. of New York, Inc.,* 309 U.S. 261 (1940). While under the National Labor Relations Act a charging party may aid the Regional Director in the course of an application for a preliminary injunction pursuant to Section 10(1) of the Act, he may not initiate an appeal which the Regional Director declined to take, "for then the charging party would become the principal complainant, in defiance of the scheme of the Act," *Sears, Roebuck and Co.* v. *Carpet, Etc., Local Union No. 419,* 410 F. 2d 1148 (10th Cir., 1969). In that case, the Court held *Scofield* not to be in point.

The statutory scheme of the Landrum-Griffin Act vests post-election remedies within the exclusive domain of the Secretary of Labor. To permit petitioner herein to introduce additional issues is to substitute the intervenor for the principal complainant. It would effectively destroy the Secretary's discretion as to the manner of prosecuting the litigation and vest it in a number of intervenors, all claiming they would be affected by the ultimate decision. This is not what Congress intended.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit should be denied.

Respectfully submitted,

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APPENDIX

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SUBCHAPTER V.—ELECTIONS

§ 481. Terms of Office and Election Procedures—Officers of National or International Labor Organizations; Manner of Election

(a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years, either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

Officers of local labor organizations; manner of election

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

Requests for distribution of campaign literature; civil action for enforcement; jurisdiction; inspection of membership lists; adequate safeguards to insure fair election

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign litera-

ture on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

Officers of intermediate bodies; manner of election

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

Nomination of candidates; eligibility; notice of election; voting rights; counting and publication of results; preservation of ballots and records

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind

by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter.

Election of officers by convention of delegates; manner of conducting convention; preservation of records

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this subchapter. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

Use of dues, assessments or similar levies, and funds of employer for promotion of candidacy of person

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the

provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

Removal of officers guilty of serious misconduct

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this subchapter.

Rules and regulations for determining adeqquacy of removal procedures

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h) of this section. Pub.L. 86-257, Title IV, § 401, Sept. 14, 1959, 73 Stat. 532.

§ 482. Enforcement—Filing of Complaint; Presumption of Validity of Challenged Election

(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

Investigation of complaint; commencement of civil action by Secretary; jurisdiction; preservation of assets

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

Declaration of void election; order for new election; certification of election to court; decree; certification of result of vote for removal of officers

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 481 of this title, or

(2) that the violation of section 481 of this title may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 481 of this title, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

Review of orders; stay of order directing election

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal. Pub. L. 86-257, Title IV, § 402, Sept. 14, 1959, 73 Stat. 534.

§ 483. Application of Other Laws; Existing Rights and Remedies; Exclusiveness of Remedy for Challenging Election

No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this subchapter. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive. Pub. L. 86-257, Title IV, § 403, Sept. 14, 1959, 73 Stat. 534.